
TITLE 915 INDIANA VETERANS' AFFAIRS COMMISSION

60 Day Requirement ([IC 4-22-2-19](#))

LSA Document #18-243

On behalf of the Indiana Veterans' Affairs Commission (Commission), I am submitting this notice in compliance with [IC 4-22-2-19](#), which requires an agency to begin the rulemaking process for new rules not later than 60 days after the effective date of the statute(s) that authorize the rule, unless a notice is filed with the Publisher that includes the reasons why rulemaking began more than 60 days after the effective date.

The statutory framework that provides the Commission with its rulemaking authority for the promulgation of the above-referenced proposed rule has existed in various formats, and the identification and explanation of these various formats is necessary to gain a full understanding of the Commission's non-compliance with the 60 day requirement.

The original statute that provided the Commission with the authority to adopt rules, [IC 10-17-12-10](#), became effective July 1, 2006, as part of P.L.58-2006, which was the legislation that established the Military Family Relief Fund (MFRF), the fund that is the source and purpose of the rules proposed by LSA Document #18-243. Prior to the passage of this legislation, the Commission primarily served as a conduit between local (county) veteran service officers and the Indiana Department of Veterans' Affairs (IDVA). The passage of the 2006 legislation substantively changed the purpose and administrative responsibilities of the Commission.

The entire year after the enactment of P.L.58-2006 was spent on establishing internal processes and procedures for the accounting and administration of the new funding set forth in P.L.58-2006. The Commission itself had virtually no staff or administrative assistance in the beginning, and relied heavily upon the staff of IDVA to assist in receiving, accounting, and sporadic distribution of the funds. Neither IDVA nor the Commission had anyone on staff who had experience or an appropriate skill set geared towards administrative rulemaking.

It was not entirely clear during the first several months after the MFRF was established that the Commission would have a formal process for providing assistance to veterans from the MFRF. The president of the Commission, at the time the MFRF was established, advocated a process of limiting the assistance provided by the fund so that the fund could be "built up" and established as a capital fund for veterans services, building community centers, or perhaps even providing loans to veteran-owned businesses and other similar purposes.

Additionally, the Commission, at that time, took note of the fact that the enabling statute for the MFRF gave the Commission authority to promulgate rules, but did not require them to do so. In 2007, the authority to adopt rules was stripped away from the Commission and that authority was given to the newly created Military and Veterans' Benefits Board (MVBB). This new board was given the statutory authority to promulgate rules that had previously been held by the Commission. The MVBB was given statutory authority to adopt rules (in this case, the "may" had been converted to a "shall" provision) but many of the same issues remained – the newly created MVBB had no staff (except in its reliance upon IDVA) and was still struggling with the overall intent and purpose of the legislature in managing and administering the new fund.

In 2010, the rulemaking authority was handed back to the Commission, this time with a "may" and a "shall" provision. The original MVBB was abolished and the authority to operate the MFRF was consolidated back into the Commission. It is worth noting that upon completion of this action in 2010, the Commission finally adopted the format, authority, and operational position vis-à-vis the MFRF that it currently operates under today.

The legislative and administrative actions that took place between 2006 and 2010 are indicative of the development of an entirely new program and reflect various growing pains that are incumbent to the establishment of the MFRF, its core purpose, and the actions that would be necessary to govern its activities. Beginning in late 2010 the Commission finally began to "take hold" of its new responsibilities, and along with legislative guidance began to transition the MFRF from a savings or withholding account with a capital purpose to an assistance-based fund that is similar in purpose and function to what the MFRF is today.

In 2016 the General Assembly took particular notice of the confusion that the Commission was experiencing in regards to the adoption (or lack thereof) of administrative rules regarding the MFRF. First, the passage of SEA 295 specifically amended [IC 10-17-12-10](#) to change the "may" provision to a "shall" provision, which cleared up earlier confusion about whether or not the Commission was required to promulgate rules regarding the provision of grants from the MFRF.

Additionally, the changes made in 2016 provided the Commission with substantive guidance from the General Assembly as to what subject area(s) should be addressed in the administrative rulemaking process, giving the Commission a strong foundation upon which to draft and administer its rulemaking in a more effective way.

Once the Commission received what it viewed as unequivocal guidance and instruction from the General Assembly that rulemaking in this area must be done, it began the process of constructing the rule. The Commission has engaged the Indiana National Guard's general counsel to assist it with both the rule drafting and the technical aspects of the rulemaking process and the Commission now believes it is on the "right track" to properly promulgate not only this rule but other rules in the future.

The Commission requested an exception to the rulemaking moratorium on June 23, 2016, and received formal written approval to proceed on May 9, 2018, from the Office of Management and Budget (OMB). It is the understanding of the Commission that its rulemaking action could not move forward without the approval of OMB.

The Commission began the rulemaking process by publishing a Notice of Intent on May 30, 2018 (DIN: [20180530-IR-915180243NIA](#)), and anticipates the rule to be approved within the one year deadline under [IC 4-22-2-25\(a\)](#).

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